

AMENDED IN ASSEMBLY JUNE 16, 2004

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL

No. 1889

Introduced by Committee on Environmental Quality (Senators Sher (Chair), Chesbro, Figueroa, Kuehl, McPherson, and Romero)

March 1, 2004

An act to amend Sections ~~21159.24 and 21167 of~~ 21080.3, 21104, 21153, 21159.24, 21159.25, and 21167 of, and to add Section 21070 to, the Public Resources Code, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

SB 1889, as amended, Committee on Environmental Quality. Environmental protection: actions against a public agency.

(1) The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. ~~Existing law requires every state agency, board, or commission, when approving or determining to carry out a project, to file a notice of that approval or determination with the Office of Planning and Research, and requires every local agency to file a notice of an approval or determination with the county clerk of each county in which the project will be located. If a person has made a written request to that public or local agency for a copy of the notice of approval or determination filed with the Office of Planning and Research or with the county clerk, existing law requires~~

~~the agency to deposit in the United States mail, first class postage prepaid, within 5 days from the date of the agency's approval or determination a written copy of the notice addressed to the person.~~

~~This bill would require the public or local agency to make the deposit in the United States mail within 3 days from the date of the approval or determination. By imposing an increased level of service on local agencies, this bill would impose a state-mandated local program.~~

~~(2) Existing law defines terms for purposes of CEQA.~~

This bill would define "trustee agency," for purposes of CEQA, as a state agency that has jurisdiction by law over natural resources affected by a project, that are held in trust for the people of the State of California.

The bill would require specified agencies, including local lead agencies, to consult with trustee agencies before making specified determinations under CEQA or completing an environmental impact report. By imposing an increased level of service on local lead agencies, the bill would impose a state-mandated local program.

(2) CEQA authorizes, until January 1, 2005, for a project in the City of Oakland that consists of specified development, a focused environmental impact report to be prepared, even though the project was not identified in a master environmental impact report, if specified conditions are met.

This bill would extend that authorization until January 1, 2008.

(3) The bill would make other technical, nonsubstantive changes to CEQA.

~~(3)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 21070 is added to the Public Resources*
2 *Code, to read:*

1 21070. “Trustee agency” means a state agency that has
2 jurisdiction by law over natural resources affected by a project,
3 that are held in trust for the people of the State of California.

4 SEC. 2. Section 21080.3 of the Public Resources Code is
5 amended to read:

6 21080.3. (a) Prior to determining whether a negative
7 declaration or environmental impact report is required for a
8 project, the lead agency shall consult with all responsible agencies
9 and ~~with any other public agency which has jurisdiction by law~~
10 ~~over natural resources affected by the project which are held in~~
11 ~~trust for the people of the State of California~~ trustee agencies.
12 Prior to that required consultation, the lead agency may informally
13 contact any ~~such agency~~ of those agencies.

14 (b) In order to expedite the requirements of subdivision (a), the
15 Office of Planning and Research, upon request of a lead agency,
16 shall assist the lead agency in determining the various responsible
17 agencies *and trustee agencies*, for a proposed project. In the case
18 of a project described in subdivision (c) of Section 21065, the
19 request may also be made by the project applicant.

20 SEC. 3. Section 21104 of the Public Resources Code is
21 amended to read:

22 21104. (a) Prior to completing an environmental impact
23 report, the state lead agency shall consult with, and obtain
24 comments from, each responsible agency, *trustee agency*, any
25 public agency ~~which~~ *that* has jurisdiction by law with respect to
26 the project, and any city or county ~~which~~ *that* borders on a city or
27 county within which the project is located unless otherwise
28 designated annually by agreement between the state lead agency
29 and the city or county, and may consult with any person who has
30 special expertise with respect to any environmental impact
31 involved. In the case of a project described in subdivision (c) of
32 Section 21065, the state lead agency shall, upon the request of the
33 applicant, provide for early consultation to identify the range of
34 actions, alternatives, mitigation measures, and significant effects
35 to be analyzed in depth in the environmental impact report. The
36 state lead agency may consult with persons identified by the
37 applicant ~~which~~ *who* the applicant believes will be concerned with
38 the environmental effects of the project and may consult with
39 members of the public who have made a written request to be
40 consulted on the project. A request by the applicant for early

1 consultation shall be made not later than 30 days after the
2 determination required by Section 21080.1 with respect to the
3 project.

4 (b) The state lead agency shall consult with, and obtain
5 comments from, the State Air Resources Board in preparing an
6 environmental impact report on a highway or freeway project, as
7 to the air pollution impact of the potential vehicular use of the
8 highway or freeway.

9 (c) A responsible agency or other public agency shall only
10 make substantive comments regarding those activities involved in
11 a project ~~which~~ *that* are within an area of expertise of the agency
12 or ~~which~~ *that* are required to be carried out or approved by the
13 agency. Those comments shall be supported by specific
14 documentation.

15 *SEC. 4. Section 21153 of the Public Resources Code is*
16 *amended to read:*

17 21153. (a) Prior to completing an environmental impact
18 report, every local lead agency shall consult with, and obtain
19 comments from, each responsible agency, *trustee agency*, any
20 public agency that has jurisdiction by law with respect to the
21 project, and any city or county that borders on a city or county
22 within which the project is located unless otherwise designated
23 annually by agreement between the local lead agency and the city
24 or county, and may consult with any person who has special
25 expertise with respect to any environmental impact involved. In
26 the case of a project described in subdivision (c) of Section 21065,
27 the local lead agency shall, upon the request of the project
28 applicant, provide for early consultation to identify the range of
29 actions, alternatives, mitigation measures, and significant effects
30 to be analyzed in depth in the environmental impact report. The
31 local lead agency may consult with persons identified by the
32 project applicant ~~that~~ *who* the applicant believes will be concerned
33 with the environmental effects of the project and may consult with
34 members of the public who have made written request to be
35 consulted on the project. A request by the project applicant for
36 early consultation shall be made not later than 30 days after the
37 date that the determination required by Section 21080.1 was made
38 with respect to the project. The local lead agency may charge and
39 collect a fee from the project applicant in an amount that does not
40 exceed the actual costs of the consultations.

(b) In the case of a project described in subdivision (a) of Section 21065, the lead agency may provide for early consultation to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in the environmental impact report. At the request of the lead agency, the Office of Planning and Research shall ensure that each responsible agency, and any public agency that has jurisdiction by law with respect to the project, is notified regarding any early consultation.

(c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in a project that are within an area of expertise of the agency or that are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation.

SEC. 5. Section 21159.24 of the Public Resources Code is amended to read:

21159.24. (a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

- (1) The project is a residential project on an infill site.
- (2) The project is located within an urbanized area.
- (3) The project satisfies the criteria of Section 21159.21.
- (4) Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.
- (5) The site of the project is not more than four acres in total area.
- (6) The project does not contain more than 100 residential units.
- (7) Either of the following criteria are met:
 - (A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.
 - (ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.

1 (B) The project developer has paid or will pay in-lieu fees
2 pursuant to a local ordinance in an amount sufficient to result in
3 the development of an equivalent number of units that would
4 otherwise be required pursuant to subparagraph (A).

5 (8) The project is within one-half mile of a major transit stop.

6 (9) The project does not include any single level building that
7 exceeds 100,000 square feet.

8 (10) The project promotes higher density infill housing. A
9 project with a density of at least 20 units per acre shall be
10 conclusively presumed to promote higher density infill housing.
11 A project with a density of at least 10 units per acre and a density
12 greater than the average density of the residential properties within
13 1,500 feet shall be presumed to promote higher density housing
14 unless the preponderance of the evidence demonstrates otherwise.

15 (b) Notwithstanding subdivision (a), this division shall apply to
16 a development project that meets the criteria described in
17 subdivision (a), if any of the following occur:

18 (1) There is a reasonable possibility that the project will have
19 a project-specific, significant effect on the environment due to
20 unusual circumstances.

21 (2) Substantial changes with respect to the circumstances under
22 which the project is being undertaken that are related to the project
23 have occurred since community-level environmental review was
24 certified or adopted.

25 (3) New information becomes available regarding the
26 circumstances under which the project is being undertaken and
27 that is related to the project, that was not known, and could not
28 have been known, at the time that community-level environmental
29 review was certified or adopted.

30 (c) If a project satisfies the criteria described in subdivision (a),
31 but is not exempt from this division as result of satisfying the
32 criteria described in subdivision (b), the analysis of the
33 environmental effects of the project in the environmental impact
34 report or the negative declaration shall be limited to an analysis of
35 the project-specific effect of the projects and any effects identified
36 pursuant to paragraph (2) or (3) of subdivision (b).

37 (d) For the purposes of this section, “residential” means a use
38 consisting of either of the following:

39 (1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

~~SEC. 2.—~~

SEC. 6. *Section 21159.25 of the Public Resources Code is amended to read:*

21159.25. (a) For a project in the City of Oakland that consists of multiple-family residential development, or a residential and commercial or retail mixed-use development with not more than 25 percent of the total floor area of the project utilized as retail space, a focused environmental impact report may be prepared, notwithstanding that the project was not identified in a master environmental impact report, if all of the following conditions are met:

(1) The Oakland City Council does both of the following:

(A) Authorizes the implementation of this section. The city council may authorize the implementation of this section only by voting to approve the practice of preparing focused environmental impact reports for projects in the central business district housing target areas specified in paragraph (11).

(B) Determines that the general plan, zoning ordinance, and related policies and programs are consistent with principles that encourage compact development in a manner that does both of the following:

(i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.

(ii) Protects the environment, open space, and agricultural areas.

(2) The city submits a draft determination to the Office of Planning and Research that the applicable general plan, zoning ordinance, and any related policies and programs are consistent with the principles described in subparagraph (B) of paragraph (1) prior to the city council making its determination regarding that consistency. The office may submit comments on the draft findings to the city council within 30 days from the date that the city submits the draft determination to the office.

(3) The city has an average population density of at least 5,000 persons per square mile.

(4) The project is consistent with the general plan, any applicable specific plan and community plan, and zoning ordinance, including any variance that is properly granted pursuant to that zoning ordinance, an environmental impact report was prepared for the general plan, and the application for the project is deemed complete pursuant to Section 65943 of the Government Code within three years of the date this section is effective.

(5) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(6) The project meets one or both of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed is, or has been previously, developed with urban uses.

(7) The density of the project is at least 40 units per net acre.

(8) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(9) The project can be adequately served by existing utilities and municipal services, and there will be adequate capacity for infrastructure, utilities, and services to serve other projects approved and proposed in the service area.

(10) The project does not include a single level building that exceeds 100,000 square feet.

(11) The project is located in one of the following central business district housing target areas:

(A) The Valdez cluster, which is bounded on the west by Telegraph Avenue, on the south by 23rd Street, on the east by Harrison Street, and on the north by 27th Street. A project located in this cluster that meets the condition described in paragraph (8) may include a portion up to one acre that does not meet that condition.

(B) The Uptown cluster, which is bounded on the west by Castro Street, on the south by 14th Street from Castro Street to Jefferson Street and 16th Street and Broadway from 16th Street to 22nd Street, and on the north by 22nd Street.

(C) The 11th Street cluster, which is bounded by Franklin Street from 12th Street to 15th Street, by Webster Street from 11th Street to 12th Street, by Alice Street from 11th Street to 13th Street, by 12th Street from Franklin Street to Webster Street, by 11th Street from Webster Street to Alice Street and 13th Street from Alice Street to Madison Street, and on the east by Madison Street from 13th Street to 15th Street, and on the north by 15th Street from Franklin Street to Madison Street.

(D) The Old Oakland cluster, which is bounded on the west by Castro Street, on the south by 7th Street, on the east by Broadway, and on the north by 11th Street.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) (1) On or before July 1, 2004, the city shall submit a report to the Office of Planning and Research that includes, but that is not necessarily limited to, all of the following information:

(A) The number of focused environmental impact reports prepared pursuant to this section.

(B) The types of projects for which focused environmental impact reports *were* prepared pursuant to this section.

(C) The time periods for preparing each of the focused environmental impact reports prepared pursuant to this section, and for acting on each project from the date that the application was deemed complete.

(D) A description of any alternatives to a project, cumulative impacts of a project, growth inducing impacts of a project, or other issues that may have been identified and analyzed if an environmental document, other than a focused environmental impact report, had been prepared for the project.

(2) Prior to submitting the report to the office pursuant to paragraph (1), the city shall hold at least one public hearing and shall respond to oral and written comments regarding the draft report. The city shall include the comments and responses in the final report.

(d) This section shall remain in effect only until January 1, 2005-2008, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, ~~2005~~ 2008, deletes or
2 extends that date.

3 *SEC. 7.* Section 21167 of the Public Resources Code is
4 amended to read:

5 21167. An action or proceeding to attack, review, set aside,
6 void, or annul the following acts or decisions of a public agency
7 on the grounds of noncompliance with this division shall be
8 commenced as follows:

9 (a) An action or proceeding alleging that a public agency is
10 carrying out or has approved a project that may have a significant
11 effect on the environment without having determined whether the
12 project may have a significant effect on the environment shall be
13 commenced within 180 days from the date of the public agency's
14 decision to carry out or approve the project, or, if a project is
15 undertaken without a formal decision by the public agency, within
16 180 days from the date of commencement of the project.

17 (b) An action or proceeding alleging that a public agency has
18 improperly determined whether a project may have a significant
19 effect on the environment shall be commenced within 30 days
20 from the date of the filing of the notice required by subdivision (a)
21 of Section 21108 or subdivision (a) of Section 21152.

22 (c) An action or proceeding alleging that an environmental
23 impact report does not comply with this division shall be
24 commenced within 30 days from the date of the filing of the notice
25 required by subdivision (a) of Section 21108 or subdivision (a) of
26 Section 21152 by the lead agency.

27 (d) An action or proceeding alleging that a public agency has
28 improperly determined that a project is not subject to this division
29 pursuant to subdivision (b) of Section 21080 or Section 21172
30 shall be commenced within 35 days from the date of the filing by
31 the public agency, or person specified in subdivision (b) or (c) of
32 Section 21065, of the notice authorized by subdivision (b) of
33 Section 21108 or subdivision (b) of Section 21152. If the notice
34 has not been filed, the action or proceeding shall be commenced
35 within 180 days from the date of the public agency's decision to
36 carry out or approve the project, or, if a project is undertaken
37 without a formal decision by the public agency, within 180 days
38 from the date of commencement of the project.

39 (e) An action or proceeding alleging that another act or
40 omission of a public agency does not comply with this division



1 shall be commenced within 30 days from the date of the filing of
2 the notice required by subdivision (a) of Section 21108 or
3 subdivision (a) of Section 21152.

4 (f) If a person has made a written request to the public agency
5 for a copy of the notice specified in Section 21108 or 21152 prior
6 to the date on which the agency approves or determines to carry
7 out the project, then not later than ~~three~~ *five* days from the date of
8 the agency's action, the public agency shall deposit a written copy
9 of the notice addressed to that person in the United States mail, first
10 class postage prepaid. The date upon which this notice is mailed
11 shall not affect the time periods specified in subdivisions (b), (c),
12 (d), and (e).

13 ~~SEC. 3.~~

14 *SEC. 8.* No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 a local agency or school district has the authority to levy service
17 charges, fees, or assessments sufficient to pay for the program or
18 level of service mandated by this act, within the meaning of
19 Section 17556 of the Government Code.

